STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs **Michigan Supreme Court No. 154779**

CARL RENE BRUNER II,
Defendant-Appellant.

Court of Appeals No. 325730
Circuit Court No. 14-008324

PLAINTIFF-APPELLEE'S ANSWER OPPOSING DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

KYM WORTHY
Prosecuting Attorney
County of Wayne

JASON W. WILLIAMS (P51503)
Chief of Research, Training,
and Appeals
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-5794

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The People of the State of Michigan – through Kym L. Worthy, Prosecuting Attorney, County of Wayne and Jason W. Williams Chief of Research, Training, and Appeals – ask this Court to deny defendant's application for leave to appeal.

1. Defendant's application relies on the arguments made in the Court of Appeals.
2. The People's brief on appeal in the Court of Appeals adequately addresses the issue, and is incorporated in this answer. See Appendix 1.
3. The Court of Appeals did not clearly err in rejecting defendant's argument and affirming his conviction. MCR 7.305(B)(5).
4. Defendant's application does not demonstrate any of the other grounds for granting leave to appeal. MCR 7.305(B)(1)-(3).

5. In sum, defendant's application raises no issues worthy of this Court's review, and it should be denied.

RELIEF

THEREFORE, the People request that this Honorable Court deny defendant's application for leave to appeal.

Respectfully submitted,

KYM WORTHY
Prosecuting Attorney
County of Wayne

/s/ *Jason W. Williams*

JASON W. WILLIAMS (P51503)
Chief of Research, Training,
and Appeals
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-5794

Dated: December 12, 2016

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Appendix 1
People's Brief on Appeal to the Court of Appeals

KYM WORTHY
Prosecuting Attorney
County of Wayne

JASON W. WILLIAMS (P51503)
Chief of Research, Training,
and Appeals
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-5794

STATE OF MICHIGAN
MI Court of Appeals

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PEOPLE OF MI V CARL RENE BRUNER II	325730

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Monica Smith Wayne County Prosecutor's Office	msmith@waynecounty.com	e-Service
Terry Horst Michael J. McCarthy, P.C.	thorst@michaeljmccarthypc.com	e-Service
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STATE OF MICHIGAN
IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v

Court of Appeals
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CARL RENE BRUNER II,
Defendant-Appellant.

Third Circuit Court No. 14-008324

BRIEF ON APPEAL
ORAL ARGUMENT NOT REQUESTED

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JASON W. WILLIAMS
Chief of Research,
Training, and Appeals

TONI ODETTE
Assistant Prosecuting Attorney
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-2698

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STATUTES AND RULES

Counterstatement of Jurisdiction

The People accept and adopt defendant's statement of jurisdiction.

Counterstatement of Issues Presented

I.

A co-defendant's statements against interest can be admitted against that co-defendant at a joint trial. Co-defendant Lawson admitted that he had been with the shooter at a club, that he drove the shooter around and dropped him off near the club, and that he fled after the shooting. Did the trial court abuse its discretion by admitting Lawson's statement against interest, especially since it was admitted only as to Lawson, and not defendant?

The trial court answered, "No."
The People answer: "No."
Defendant answers: "Yes."

II.

Identity may be shown by either direct or circumstantial evidence. Here, it was defendant who got forcefully thrown out of the club, defendant who threatened the security guards that he would return, defendant who was barred from re-entering the club when he refused to be searched for weapons, and defendant who was seen circling the club immediately before the shooting. Was the circumstantial evidence sufficient to prove that defendant was the one who committed the shooting?

The trial court answered, "Yes."
The People answer: "Yes."
Defendant answers: "No."

Counterstatement of Facts

Following a jury trial, defendant was convicted on December 4, 2014, in the Wayne County Circuit Court before the Honorable Craig Strong of first-degree murder, assault with intent to murder, felon in possession of a firearm, and felony firearm.[1] He was sentenced as a habitual-fourth offender on January 5, 2015, to serve concurrent terms of life for first-degree murder, 450-900 months for assault with intent to murder, and 40-60 months for felon in possession of a firearm, plus two consecutive years for felony firearm.[2] The People accept and adopt defendant's statement of facts, except for conclusions of fact and law. Additional facts may be presented *infra* in the Argument section of this brief.

[1]MCL 750.316(a); MCL 750.83; MCL 750.224f; MCL 750.227b. Defendant Carl Bruner and his co-defendant, Michael Lawson, were tried together for the shooting death of victim Marcel Jackson outside of the Pandemonium Club in Detroit on June 20, 2012. Bruner was tried as the actual shooter; Lawson was tried under an aiding and abetting theory for assisting in the murder. Lawson was convicted of second-degree murder and assault with intent to murder.

[2]References to the trial record are cited by the date of the hearing followed by the page number; 1/5, 16.

Argument

I.

A co-defendant's statements against interest can be admitted against that co-defendant at a joint trial. Co-defendant Lawson admitted that he had been with the shooter at a club, that he drove the shooter around and dropped him off near the club, and that he fled after the shooting. The trial court did not abuse its discretion by admitting Lawson's statement against interest, especially since it was admitted only as to Lawson, and not defendant.

Standard of Review

A trial court's decision to admit evidence is reviewed for an abuse of discretion.[3] An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude there was no justification or excuse for the ruling.[4] A decision on a close evidentiary question ordinarily cannot be an abuse of discretion.[5] If there is an underlying question of law, such as whether admissibility is precluded by a rule of evidence, review of that question of law is de novo.[6]

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[3] *People v Watson*, 245 Mich App 572, 575 (2001).

[4] *People v Ullah*, 216 Mich App 669, 673 (1996).

[5] *People v Bahoda*, 448 Mich 261, 289 (1995).

[6] *People v McDaniel*, 469 Mich 409, 412 (2003).

Discussion

Webb's preliminary examination testimony about what co-defendant Lawson told him about the shooting was properly admitted against only Lawson as a statement against interest because Webb was unavilable at trial and had only testified at Lawson's exam, not defendant's. To the extent the acquaintance's testimony also may have implicated defendant, defendant was not prejudiced because his name was redacted from the testimony, the jury was properly and repeatedly instructed to only consider Webb's testimony against Lawson, and the content of the testimony was largely cumulative to the other properly admitted testimony presented at trial.

For reasons discussed more thoroughly in co-defendant Lawson's Brief on Appeal, Webb's preliminary exam testimony was properly admitted against Lawson because Webb was unavilable at the time of the trial and Lawson's counsel had previously had the opportunity to cross-examine the witness. During trial, the prosecutor initially intended to have Webb testify against both defendants under *People v Taylor*, which holds that inculpatory statements of a codefendant to an acquaintance are nontestimonial and admissible through the acquaintance's testimony.[7] But, when it came time for Webb to testify against both defendants as was planned, he was unavailable. Thus, the prosecutor agreed that Webb's

[7] *People v Taylor*, 482 Mich 368, 374, 380 (2008).

preliminary exam testimony should be admitted against only Lawson and that any mention of defendant Bruner by name should be redacted. The judge agreed, and Webb's redacted testimony was read into the record against only defendant Lawson.[8] Likewise, the jury was repeatedly instructed by both the attorneys and the court that Webb's statement should only be used against Lawson, not Bruner.[9]

Despite the fact that the testimony was properly limited and not used against him, defendant nevertheless argues (1) that Webb's testimony should not have been admitted at all because it did not contain a statement against the declarant's (Lawson's) penal interest, and (2) that defendant was prejudiced by the reading of Webb's testimony.

First of all, the statement was properly admitted against Lawson as a statement against interest. MRE 804(b)(3) provides that a statement that, at the time of its making, "so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true" is not excluded by the hearsay rule if the declarant is unavailable as a witness.[10] And, according to our Supreme Court, the fact that a

[8]12/1, 4-12.

[9]Id at 16-17, 104; 12/3, 26-27, 75, 88, 90.

[10]MRE 804(b)(3).

statement is against the declarant's interest is what makes it reliable; there is no need for additional indicators. The Court in *People v Taylor* reiterated what it had noted in *People v Poole*: when a statement "as a whole is clearly against the declarant's penal interest" it is "*as such*" reliable.[11]

In this case, Lawson's comments to Webb about what occurred that evening were properly admitted against Lawson as statements against interest.[12] Lawson told Webb that the police were looking for him because of something that happened at the club. Lawson said that the man he was with got into a fight with a girl and was then "roughed up" by the bouncers. After that, according to what Lawson told Webb, Lawson and the other man drove around in the other man's gray Charger. Lawson was the driver and the other man was the passenger. Lawson told Webb that the two men had a gun with them and that the other man took the gun before Lawson stopped to let him out of the car. After the other man got out, Lawson pulled over, heard gun

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[11] *People v Taylor*, *supra*, 482 Mich at 379 (2008) (emphasis added), quoting *People v Poole*, 444 Mich 151, 161 (1993); see also *Desai v Booker*, 732 F3d 628, 631 (CA 6 2013) ("The statements fell within an established hearsay exception for statements against penal interest, which contains a reliability theory of its own in this instance: that individuals do not lightly admit to committing murder.")

[12] In Lawson's own appeal, he raises the issue of whether the trial court abused its discretion in finding the witness unavailable and whether the reading of the transcript violated his right to confrontation. The People do not again address this issue here, as the statement was only used against Lawson.

fire, and then fled the scene. Lawson also told Webb that the other man told him he did not need a ride after because he was being picked up by a female.[13]

When considered in light of the surrounding circumstances, Lawson's statements to Webb were directly against Lawson's penal interest. Viewed in context, Lawson's statements subjected him to criminal liability because he admitted, among other things, that he drove the shooter's Charger around the block a couple times with the shooter (whom he knew had a grudge against the security guards) and that he knew the shooter had a gun when he dropped him off right near where the security guards were standing. When he heard shots, he fled. He also admitted that he knew the police were looking for him. These sorts of incriminating statements are not the sort a "reasonable person in his position"[14] would have made unless believing them

[13] 12/1, 18-29.

[14] *Williamson v United States*, 512 US 594, 603-604 (1994)("[W]hether a statement is self-inculpatory or not can only be determined by viewing it in context. Even statements that are on their face neutral may actually be against the declarant's interest. "I hid the gun in Joe's apartment" may not be a confession of a crime; but if it is likely to help the police find the murder weapon, then it is certainly self-inculpatory. "Sam and I went to Joe's house" might be against the declarant's interest if a reasonable person in the declarant's shoes would realize that being linked to Joe and Sam would implicate the declarant in Joe and Sam's conspiracy. And other statements that give the police significant details about the crime may also, depending on the situation, be against the declarant's interest. The question under Rule 804(b)(3) is always whether the statement was sufficiently against the declarant's penal interest "that a reasonable person in the declarant's position would not have made the statement unless believing it to be true," and this question can only be answered in light of all the surrounding circumstances.")

to be true. Accordingly, Lawson's statements to Webb were properly admitted against Lawson as statements against interest under MRE 804(b)(3).

Second, defendant was not prejudiced by the fact that the testimony was read because his name was redacted from the testimony and the jury was repeatedly instructed that they could consider it only against Lawson, not Bruner. As a precautionary measure, the prosecutor agreed to change any reference to defendant Bruner simply to "Blank." While the other properly admitted evidence may have, in context, suggested that "Blank" was actually defendant Bruner based on his actions, that does not change the fact that the testimony itself was redacted to minimize any potential prejudice. Likewise, the jury was told repeatedly by the prosecutor that Webb's testimony was only to be used against Lawson, not defendant Bruner. And, of course, the jury was instructed immediately before the testimony and then again during jury instructions that Webb's testimony was only to be considered against Lawson.

Defendant's reliance on *Bruton v United States* is misplaced. There, two co-defendants were tried jointly and the prosecution admitted the formal confession of one defendant against only that defendant even though his confession also inculpated the co-defendant. The Supreme Court held that the introduction of the confession "posed a substantial threat to [the co-defendant's] right to confront the witnesses

against him . . . ."[15] But in this case, Lawson's casual statement to an accomplice was not testimonial and, therefore, does not implicate the Confrontation Clause. Further, there is little question that, had Webb been present, his testimony regarding what Lawson told him would have been admissible against *both* defendants.[16]

Further, even if it was error to admit Webb's testimony when the two defendants shared one jury, any such error was harmless because the testimony was largely cumulative to the rest of the testimony presented at trial. Nearly everything Lawson told Webb was already admitted at trial against defendant via properly admitted evidence. Indeed, the jury heard from several witnesses that the two were at the club together, that defendant fought with a girl, that both defendants left when defendant Bruner was kicked out by the security guards, that the two defendants drove around the block multiple times in defendant's Charger, that defendant Bruner got out just before the shooting occurred, and that Lawson called Bruner shortly after the shootings. The only "new" information in Webb's testimony was that Lawson was aware there was a gun in the car, which was a fact that only further implicated Lawson as an aider and abetter. Accordingly, even it was error to admit the statement

[15]*Bruton v United States*, 391 US 123, 137 (1968).

[16]See *People v Taylor*, *supra*, 482 Mich at 379 (2008).

against Lawson when the two defendants shared one jury, any such error was harmless and defendant's convictions should be affirmed.

II.

Identity may be shown by either direct or circumstantial evidence. Here, it was defendant who got forcefully thrown out of the club, defendant who threatened the security guards that he would return, defendant who was barred from re-entering the club when he refused to be searched for weapons, and defendant who was seen circling the club immediately before the shooting. The circumstantial evidence was sufficient to prove that defendant was the one who committed the shooting.

Standard of Review

A challenge to the sufficiency of the evidence is reviewed de novo.[17] When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence presented in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.[18] "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime."[19] This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses.[20] The trier of fact must decide

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[17] *People v Sherman-Huffman*, 241 Mich App 264, 265 (2000).

[18] *People v Wolfe*, 440 Mich 508, 515 (1992).

[19] *People v Allen*, 201 Mich App 98, 100 (1993).

[20] *People v Wolfe*, *supra*, 440 Mich at 514.

what inferences can be fairly drawn from the evidence and judge the weight it accords to those inferences.[21] Likewise, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict."[22]

Discussion

Viewed in the light most favorable to the prosecution, there was sufficient evidence presented to support defendant's identification as the person who committed the shootings because several security guards—in addition to some video footage—identified defendant as the irate man who was forcefully thrown out of the club earlier, who lingered outside the club until closing time, and who was the passenger in the vehicle that drove around several times immediately before the shooting.

Defendant does not contest the proof of any of the specific elements of the convictions, but argues generally that the prosecution's evidence was insufficient for a reasonable trier of fact to conclude that defendant committed those crimes. Identity is an element of every offense.[23] "Identity may be shown by either direct or

[21] *People v Hardiman*, 466 Mich 417, 428 (2002).

[22] *People v Nowack*, 462 Mich 392, 400 (2000).

[23] *People v Yost*, 278 Mich App 341, 356 (2008).

circumstantial evidence . . . ."[24] A positive identification by a witness may be sufficient to support a conviction of a crime.[25] The credibility of identification testimony is a question of fact that this Court will not decide over again.[26]

Here, there was more than sufficient evidence of defendant's identity as the person who committed the shootings. Darnell Price, a security guard working at the Pandemonium Club that evening, heard a disturbance by the DJ booth on the second floor around midnight. When he saw a man and woman fighting with each other, he restrained the man. Price identified the man as defendant and said defendant was irate and agitated while Price and another guard forced him down the stairs and then forcefully tossed him out of the club.[27] All of this was captured on video, which was played for the jury.[28] After defendant was thrown out, Price heard him aggressively say that he would be back.[29]

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[24]*People v Kern*, 6 Mich App 406, 409-410 (1967).

[25]*People v Davis*, 241 Mich App 687, 700 (2000).

[26]*Id.*

[27]11/24, 5-14.

[28]Id at 17.

[29]Id at 114. Another guard, Deandre Mack, also remembered seeing a man bring thrown out of the club shortly after midnight. He noticed the man outside making hand gestures at the other guards and could see him saying something along the lines of "you are going to get yours" as he pointed. He also identified defendant. 11/25, 111-118.

Around 2:30 a.m., Price noticed defendant standing by the exit door of the club saying he wanted back into the club to find his phone. After being told he could come in if he agreed to be searched for weapons first, he refused to be searched and was denied access.[30] Roughly a half hour later around 3 a.m., Price was standing outside the club with a few other security officers when he noticed a gray Charger circling the block. He noticed that defendant was in the passenger seat as the vehicle went slowly around the block. When the vehicle circled around again, he noticed it stop at the corner and then come towards them again, but this time without defendant in the passenger seat. The guards became suspicious when they noticed defendant was suddenly not in the vehicle. When the car stopped across the street, they looked to see the driver get out of the vehicle. As that was happening, they then heard multiple shots coming at them from behind them.[31]

The other guards testified largely consistently with Price. Wayne White—who was shot in the back, but lived thanks to a bullet-proof vest—testified that he also interacted with defendant when he came back to the club to get his phone. He testified that defendant was hostile and refused to be searched. He likewise noticed defendant getting into the passenger side of the gray Charger and circling the block

[30]11/24, 23-26.

[31]Id at 27-33.

multiple times until eventually defendant was no longer in the passenger seat. He then heard shots coming from behind him. He identified defendant as the man who was hostile at the club, was standing outside the club, and was the passenger in the gray Charger circling the block before the shootings.[32]

The manager of the club, Dennis Smith, testified that he noticed defendant punch a female twice in the DJ booth. He pulled defendant away and then additional security guards came and forced him out of the club. He later noticed that defendant wanted back into the club, but refused to be searched for weapons. Then, until the time he left the club around 2:30 a.m., Smith noticed defendant leaning against a pole outside of the club.[33]

Further, the victim's mother, Carolyn Warrior, testified that she actually knew defendant and that he was "like a son" to her. Indeed, just over a week before the shooting, she met with defendant because he was putting money in her incarcerated son's prison account. She noticed him driving a gray Charger when they met. They had a friendly meeting and she continued to talk to him on a regular basis up until her son's death. After her son was killed, she never heard from him again.[34]

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[32]11/24, 124-146.

[33]11/25, 5-27.

[34]11/21, 31-38.

Viewed in the light most favorable to the People, there was sufficient evidence of identification to convict defendant. While defendant makes much of the fact that nobody actually saw the shooter as the shooting was occurring, the jury was free to infer from all of the other evidence that defendant was, in fact, the shooter and circumstantial evidence is sufficient to prove identification. In this case, defendant was clearly agitated with the security staff for forcefully throwing him out, lingered outside the club until closing time, had his co-defendant drive his gray Charger slowly around the block multiple times, got out of the car, and then began shooting at the guards from behind while they were focused on the co-defendant. Because there was sufficient evidence that defendant committed the shootings, his convictions should be affirmed.

Relief

THEREFORE, this Court should affirm defendant's convictions.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JASON W. WILLIAMS
Chief of Research, Training,
and Appeals

/s/ TONI ODETTE

TONI ODETTE (P72308)
Assistant Prosecuting Attorney
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
(313) 224-2698

April 26, 2016